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JUL 28 2005

OFFICE OF PETITIONS

In re Application of :
Clark et al. :
Application No. 10/658,986 :
Filed: September 10, 2003 : ON PETITION
Attorney Docket Number: :
1581 US FA :

This is a decision on the Response to Notice of Incomplete Nonprovisional Application Dated December 3, 2003, filed February 9, 2004. The Response is properly treated under 37 CFR 1.53 to accord the application a filing date of September 10, 2003.

The petition is granted.

The application was filed on September 10, 2003. On December 3, 2004, the Office of Initial Patent Examination mailed a Notice of Incomplete Nonprovisional Application (hereinafter "Notice"), informing Applicant that the application had NOT been accorded a filing date because the application had been deposited without drawings.

Applicant files the instant correspondence in response to the Notice and provides Fig. 1 and Fig. 2 "as described in the 'Brief Description of the Drawings Section' at pages 3 and 4 of the specification."

A review of the Notice reveals that Applicant was advised that the filing date of the application will be the date of receipt of the drawing Figures, and that any assertions that the items were submitted or are not necessary for a filing date must be by way of petition.

A review of the file reveals that the specification contains method claims (i.e. claims 1-4). As stated in MPEP § 601.01(f), it is the practice of the PTO to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains method claims; therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

In applications filed without all of the drawing figure(s) referred to in the specification, the MPEP § 601.01(g) states that a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification. (Emphasis supplied).

In this instance, a petition is not necessary to add the drawing figures. Applicants may add figure(s) described in the specification on the basis that the drawings are not new matter. New drawings may be entered by the primary examiner without a petition so long as the drawings contain no new matter. See, MPEP § 608.02(a).

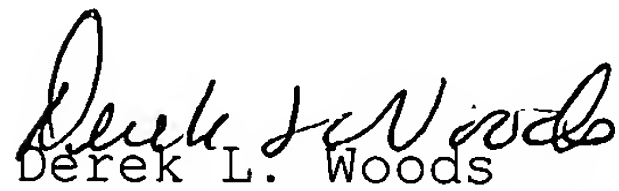
In view of the above, the Notice mailed December 3, 2003, was mailed in error and is hereby withdrawn.

This application is being forwarded to the Office of Initial Patent Examination, Customer Corrections, for further processing, including processing of the Response to Notice of Incomplete Nonprovisional Application Dated December 3, 2003,

with the filing date of September 10, 2003, and an indication that no drawings were required or present on filing.

A refund of the petition fee has been credited to deposit account 01-0682 as authorized in the instant petition.

Telephone inquiries concerning this matter should be directed to Petitions Attorney Derek L. Woods at (571) 272-3232.



Derek L. Woods
Petitions Attorney
Office of Petitions